

**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of AT&T Inc. For Forbearance	)	WC Docket No. 07-21
Under 47 U.S.C. § 160 From Enforcement	)	
Of Certain of the Commission's Cost	)	
Assignment Rules	)	
	)	
Petition of BellSouth Telecommunications,	)	WC Docket No. 05-342
Inc. For Forbearance Under 47 U.S.C. § 160	)	
From Enforcement of Certain of the	)	
Commission's Cost Assignment Rules	)	
	)	
Petition of Verizon For Forbearance	)	WC Docket No. 07-273
Under 47 U.S.C. § 160(c) From Enforcement	)	
Of Certain of the Commission's Recordkeeping	)	
And Reporting Requirements	)	
	)	
Petition of Qwest Corporation for Forbearance	)	WC Docket No. 07-204
From Enforcement of the Commission's ARMIS	)	
And 492A Reporting Requirements Pursuant	)	
To 47 U.S.C. § 160	)	

**REPLY COMMENTS OF VERIZON**

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## I. INTRODUCTION AND SUMMARY

Consistent with its *Cost Assignment Forbearance Order*, the Commission must, under the express terms of section 10, grant Verizon<sup>1</sup> forbearance from continued application of the cost assignment rules.<sup>2</sup> Verizon, as a price cap regulated carrier at the federal level, is similarly situated to AT&T in all material respects, and the Commission's reasoning in granting AT&T forbearance from the cost assignment rules applies equally to Verizon.

Notwithstanding claims by a few commenters to the contrary,<sup>3</sup> forbearance does not require that all similarly situated carriers file a formal petition for relief, and the Commission previously has extended forbearance on its own motion. That the *Cost Assignment Forbearance Order* may be the subject of a petition for reconsideration as well as a petition for review is also irrelevant. The *Cost Assignment Forbearance Order* has not been stayed, and thus the Commission's decision to forbear from the cost assignment rules is in effect and its reasoning in granting relief to AT&T remains valid.

Some commenters oppose forbearance by attempting to manufacture material differences between Verizon and AT&T when none exist or by rehashing the same arguments raised in a separate reconsideration petition, arguments which the Commission previously considered and

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<sup>1</sup> The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications, Inc.

<sup>2</sup> *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 07-21, Memorandum Opinion and Order, ¶ 32 (rel. April 24, 2008) ("*Cost Assignment Forbearance Order*"), *pet. for recon. pending*.

<sup>3</sup> See Comments on the Issue of Cost Forbearance for Verizon and Qwest ("Joint Comments") filed by Sprint Nextel Corporation, T-Mobile USA, Inc., CompTel, Time Warner Telecom, Inc. and One Communications Corp. ("Joint Commenters"); Comments and Opposition of the New Jersey Division of Rate Counsel ("NJDRRC Comments"); Comments of the National Association of State Utility Consumer Advocates Opposing Forbearance for Verizon and Qwest ("NASUCA Comments").

rejected. Such opposition does not undercut the Commission's reasoning in correctly finding that the requirements of section 10 are satisfied and forbearing from the cost assignment rules. Despite some commenters' desire to perpetuate arcane regulatory requirements that apply to only a small subset of carriers and that serve no current, federal need, the Commission must extend forbearance relief to Verizon consistent with section 10 and the deregulatory mandate of the Telecommunications Act of 1996.

## **II. THERE ARE NO PROCEDURAL OBSTACLES TO THE COMMISSION EXTENDING FORBEARANCE RELIEF TO VERIZON.**

Arguments by some commenters that the Commission cannot extend forbearance relief to Verizon in the absence of a "formal request for forbearance" are meritless. NJDRC Comments at 2.<sup>4</sup> The filing of a petition is not a prerequisite for forbearance relief. Indeed, section 10 directs that "the Commission *shall forbear* from applying any regulation or provision of this chapter to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services. . ." as long as the three-part statutory test is satisfied. *See* 47 U.S.C. § 160(a) (emphasis added). The Commission's forbearance obligation is thus triggered by its determination that the standard is met, not by the filing of a petition for forbearance. 47 U.S.C. § 160(c). A carrier's separate right to file a forbearance petition and the Commission's duty to act on that petition by the statutory deadline does not change the broader requirements of section 10. *Id.* As Verizon noted in its initial comments, the Commission, on its own motion, previously has extended forbearance to similarly

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<sup>4</sup> *See also* Joint Comments at 3-4 (insisting that Verizon's and Qwest's *ex parte* letter requesting forbearance relief "cannot possibly be deemed to be a valid petition for forbearance"); NASUCA Comments at 2 (claiming that "forbearance would be especially inappropriate given the informal nature of Verizon's and Qwest's request").

situated carriers that did not file forbearance petitions when the rationale for granting relief applied equally to those carriers. Verizon Comments at 2-5; *see also* Comments of Qwest Corporation at 9-10 (“Qwest Comments”) (noting that “the Commission has extended forbearance to similarly situated carriers without requiring carriers to file ‘me too’ petitions”). The Commission must do the same here.

That the Commission has not only the power but the duty to extend forbearance relief to similarly situated carriers under the circumstances here is fatal to Joint Commenters’ claim that Verizon “has failed to provide sufficient evidence to satisfy the Section 10 forbearance standard.” Joint Comments at 6. Because the Commission correctly found that AT&T was entitled to forbearance from the cost assignment rules, and because its reasoning in so doing applies equally to Verizon, there is no additional evidence required from Verizon.

Equally without merit is the assertion that a pending petition for review and petition for reconsideration of the *Cost Assignment Forbearance Order* preclude extending forbearance relief to Verizon. NASUCA Comments at 2-3; NJSRC Comments at 2-3. The filing of a petition for review or a petition for reconsideration has no bearing on the effectiveness of an order or rule of the Commission. *See* 28 U.S.C. § 2349(b) (“The filing of the petition to review does not of itself stay or suspend the operation of the order of the agency . . .”); 47 U.S.C. § 405(a) (“[n]o such [petition for reconsideration] shall excuse any person from complying with or obeying any order, decision, report, or action of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission”); 47 C.F.R. § 1.106(n) (“[w]ithout special order of the Commission, the filing of a petition for reconsideration shall not excuse any person from complying with or obeying any decision, order,

or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof”).<sup>5</sup>

Verizon, like AT&T, is subject to price cap regulation at the federal level. Thus, there is “no current, federal need” for the cost assignment rules, and they are unnecessary to ensure that Verizon’s charges and practices are just and reasonable and not unjustly discriminatory, to protect consumers, or to ensure the public interest. Under the circumstances, “it would be beyond [the Commission’s] authority to maintain these onerous regulatory requirements” for Verizon, and the express terms of section 10 require that the Commission grant Verizon forbearance from the cost assignment rules. *Cost Assignment Forbearance Order* ¶ 32.<sup>6</sup>

### **III. THERE ARE NO MATERIAL DIFFERENCES BETWEEN AT&T AND VERIZON THAT COULD PRECLUDE EXTENDING FORBEARANCE RELIEF TO VERIZON.**

Joint Commenters allege that Verizon is “not similarly situated with respect to AT&T” because, unlike AT&T, Verizon: (i) is “subject to rate-of-return regulation at the state level”; and

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<sup>5</sup> See also *Parish of Jefferson v. Cox Communs. La., LLC*, 2003 U.S. Dist. LEXIS 27078, 18-19 (E.D. La. 2003) (holding that the “effect of the FCC’s Ruling is not diminished by the existence of an appeal. The taking of an appeal does not stay or otherwise invalidate the FCC’s ruling”); *Christian Broadcasting of the Midlands, Inc. Omaha, Nebraska; Pappas Telecasting Of The Midlands Omaha, Nebraska; For a Construction Permit for a New UHF Commercial Television Broadcast Station*, 2 FCC Rcd 6404, ¶ 10 (1987) (finding that “[f]inal adjudicatory orders of the Commission itself are effective on the day after the date of release and are not stayed by the filing of petitions for reconsideration”); *ITT World Communications Inc., Required Rate of Return and, ITT World Communications Inc. Investigation into Rate Base and Expenses*, 85 FCC 2d 561, ¶ 9 (1981) (finding that the “filing of a petition for reconsideration does not excuse persons from complying with orders of the Commission”).

<sup>6</sup> See also Qwest Comments at 2 (“The Commission’s findings and rationale in granting AT&T forbearance apply equally to Qwest and compels extending the same relief to Qwest”); Comments of Embarq at 3 (“the Commission’s reasoning in the AT&T Forbearance Order compels extending the same forbearance relief to all price cap ILECs, including Verizon, Qwest, and independent ILECs like Embarq”).

(ii) receives “federal high cost loop support.” Joint Comments at 8-11. These are meaningless distinctions that are not grounds for denying forbearance relief to Verizon.

As Verizon explained in its initial comments, only approximately four percent of Verizon’s access lines are subject to state rate-of-return regulation. Verizon Comments at 4, n.3. These lines are concentrated in six states where Verizon is not the legacy RBOC and has significantly less than a majority of lines in the state. For example, in Nevada, where there are more than one million total access lines in the state, Verizon has only approximately 37,000 lines that are subject to rate-of-return regulation.

But even in those limited areas where Verizon’s intrastate rates may be subject to rate-of-return regulation, the Commission has made clear that a potential intrastate regulatory use cannot justify continued application of the cost assignment rules. *Cost Assignment Forbearance Order* ¶ 32 (finding it “beyond our authority” to maintain “onerous regulatory requirements absent a “current, *federal* need”) (emphasis added). Indeed, the Commission granted AT&T forbearance from the cost assignment rules without resolving a “factual dispute” concerning “the extent to which states rely on the data produced by our Cost Assignment Rules for intrastate rate regulation ....” *Id.* It was unnecessary for the Commission to resolve this dispute because it lacks the authority “to maintain federal regulatory requirements that meet the three-prong forbearance test” under section 10 merely because those requirements “may produce information helpful to state commissions for intrastate regulatory purposes solely.” *Id.*

While Joint Commenters urge the Commission not to “ignore” Verizon’s “intrastate regulatory status,” this status has no bearing on forbearance because a potential state regulatory use cannot justify continuing the federal cost assignment rules. Joint Comments at 8. The same is true for the separations rules, upon which Joint Commenters also erroneously rely in opposing

forbearance. *See id.* at 9-10. As the Commission previously held, “jurisdictional separations, like other Cost Assignment Rules, have reduced significance under price caps because ‘price caps regulation reduces a BOC’s incentives to allocate costs improperly.’” *Cost Assignment Forbearance Order* ¶ 25 (quoting *Non-Accounting Safeguards Order*, 11 FCC Rcd 21905, ¶ 181 (1996)). And, as with AT&T, Verizon, “working cooperatively with the state commissions in its region, can develop methods of separating costs, satisfying any remaining need states have for jurisdictional separations information.” *Id.*

Notwithstanding some commenters’ claims otherwise, *Smith v. Illinois Bell* does not preclude granting Verizon forbearance from the cost assignment rules. Joint Comments at 9. Consistent with the *Cost Assignment Forbearance Order*, Verizon would maintain the Uniform Systems of Accounts in Part 32 of the Commission’s rules, *id.* at ¶ 12, and could develop, in cooperation with state commissions, acceptable methods of separating costs for jurisdictional separations purposes in the event there is even a use for such data in the few states that maintain outdated rate-of-return regimes. In *Smith v. Illinois* the Supreme Court held that “extreme nicety is not required [in apportioning costs for jurisdictional separations], only reasonable measures being essential ....” *Smith v. Illinois*, 282 U.S. 133, 150 (1930). As the Commission has explained, “*Smith* compels ‘only reasonable measures’, because the ‘[a]llocation of costs is not a matter for the slide-rule,’ but ‘involves judgment on a myriad of facts.’” *Jurisdictional Separations and Referral to the Federal-State Joint Board*, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516 ¶ 18, n.44 (2006) (quoting *MCI Telecommunications Corp. v. FCC*, 750 F.2d 135, 141 (D.C. Cir. 1984)).

In addition, that two, small Verizon entities – one in Arizona and the other in Idaho – together receive less than \$1 million annually in federal high cost loop support cannot preclude



extending forbearance relief to Verizon. Joint Comments at 10. To the extent Verizon's pre-separated cost data (account information that is categorized but still not subject to the separations factors) is used to calculate high cost support in isolated study areas, this issue can readily be addressed in a compliance plan that Verizon, like AT&T, would file as a condition to forbearance describing how it will continue to satisfy its statutory and regulatory obligations. *See Cost Assignment Forbearance Order* ¶ 21. Furthermore, because account categories are frozen and high cost loop and switching support is calculated using pre-separated cost data, maintaining and producing the information that reflects costs for purposes of calculating USF high cost support would not be difficult. *See* 47 C.F.R. §§ 36.613 & 36.621-36.622, 54.301.

Joint Commenters also argue that, even though Verizon may be similarly situated to AT&T, forbearance relief should be denied because "the forbearance process was never intended to ensure that all carriers are treated equally." Joint Comments at 8 & 10-11. But this argument misses the mark; if the three-prong forbearance test under section 10 is met for AT&T, it also is met for Verizon, which means that the Commission must forbear from applying the cost assignment rules to Verizon. For example, under the third prong of the section 10 forbearance test, the Commission considered whether forbearance from the cost assignment rules is in the public interest by eliminating unnecessary and disparate regulatory requirements that adversely affect competition and consumers. *Cost Assignment Forbearance Order* ¶ 41. The Commission answered this question in the affirmative. Extending to Verizon the same forbearance relief granted to AT&T will result in the same public interest benefits – a point the Joint Commenters do not address.

**IV. JOINT COMMENTERS PROVIDE NO BASIS FOR THE COMMISSION TO RECONSIDER THE *COST ASSIGNMENT FORBEARANCE ORDER* OR TO DENY FORBEARANCE RELIEF TO VERIZON.**

Joint Commenters oppose extending forbearance relief to Verizon for the same reasons they seek reconsideration of the *Cost Assignment Forbearance Order*. Specifically, Joint Commenters insist that the Commission should reconsider granting forbearance from the cost assignment rules and should decline extending such relief to Verizon because it would: (1) “eviscerate the critical safeguards” established by the Commission’s *Non-Dominant Order*<sup>7</sup>; (2) “undermine the effectiveness of price caps”; and (3) “jeopardize the Commission’s ability to ensure compliance under section 254(k).” Joint Comments at 12-15.

However, as Verizon explained previously, these are the same arguments the Commission already considered and rejected. *See* Opposition of Verizon to Petition for Reconsideration, Docket 07-21, at 3-4 (filed June 11, 2008). Just as these repackaged theories cannot justify granting reconsideration, they do not warrant denying forbearance relief to Verizon.

First, the Commission held that the *Non-Dominant Order* does “not preclude” granting forbearance from the cost assignment rules, particularly since “section 10 compels us to the modify the framework” when the statutory standard for forbearance has been satisfied. *Cost Assignment Forbearance Order* ¶ 27. According to the Commission, with the conditions it attached to forbearance from the cost assignment rules, this “modified regulatory framework” would adequately protect customers. *Id.*

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<sup>7</sup> Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007) (“*Non-Dominant Order*”).

Second, the Commission held that the accounting data derived from the cost assignment rules were unnecessary “for rate regulation functions” or for “reinitializing price caps.” *Id.* ¶¶ 18-19. According to the Commission, the cost assignment rules do not determine whether a price cap carrier’s rates “are just, reasonable, and not unjustly or unreasonably discriminatory,” *id.* ¶ 16, and the compliance plan imposed as a condition to forbearance that requires production of accounting data “maintains the Commission’s ability to obtain accounting information that may be necessary in the future, while providing a less costly and administratively burdensome alternative ....” *Id.* ¶ 21.

Third, the Commission held that forbearance from the cost assignment rules would not preclude the Commission from ensuring compliance with 47 U.S.C. § 254(k), which prohibits the use of “services that are not competitive to subsidize services that are subject to competition.” *Id.* ¶ 30. According to the Commission, compliance with section 254(k) is adequately ensured in the absence of the cost assignment rules by: (i) “the continuing statutory obligation” to prevent cross-subsidies between competitive and noncompetitive services; and (ii) the condition requiring annual certification of compliance and mandating that “requested cost accounting information necessary to prove such compliance” be maintained and produced upon request *Id.*

Joint Commenters also raise the same complaints about the Commission’s decision to condition forbearance upon AT&T’s providing accounting data as requested for future regulatory purposes and filing a compliance plan explaining how it will satisfy this condition. *Cost Assignment Forbearance Order* ¶¶ 21 & 45. These complaints are misguided. For example, Joint Petitioners predict that the compliance plan “is unlikely [to] ... generate the objective data the Commission requires to carry out its statutory oversight responsibilities,” Joint Comments at

16, even though: (i) AT&T has yet to file its compliance plan; and (ii) the Wireline Competition Bureau (“Bureau”), which has the authority to prescribe the requirements of and approve the compliance plan, has yet to pass on the plan.

Equally misguided is the argument by the AdHoc Telecommunications Users Committee (“AdHoc”) that the Commission “cannot reasonably trust” a compliance plan filed by Verizon, based on comments filed by Verizon in a different docket in the context of a different statute. AdHoc Comments at 3; *see also* Joint Comments at 16 (bemoaning that Verizon, like AT&T, has the incentive “to skew the design” of the compliance plan “to the ultimate detriment of the public interest”). Verizon’s comments in the universal service proceeding seized upon by AdHoc – that “[e]xperience suggests that when there is an incentive for carriers to demonstrate high costs, they will do so” – accurately describe Verizon’s concern about universal service proposals by which competitive eligible telecommunications carriers would receive subsidies under a new high cost system by demonstrating their own costs. In Verizon’s view, and as stated in its comments, such a system, which “rewards carriers for higher costs[,] is not well designed to encourage efficiency.” Reply Comments of Verizon and Verizon Wireless at 13, *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337 and CC Docket No. 96-45 (filed June 2, 2008).

But Verizon’s concern about carrier incentives in the universal service context has no bearing upon the issues here. Unlike a universal service system that would allow a carrier to receive higher subsidies by demonstrating higher costs, Verizon would not have an incentive to overstate its costs in a compliance plan, since its costs have no bearing on interstate rates under price cap regulation.<sup>8</sup> *Cost Assignment Forbearance Order* ¶ 17 (“price cap regulation severs

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<sup>8</sup> Even in those few areas where Verizon receives a small amount of rural universal service high cost support, Verizon’s interstate rates are not regulated on a cost basis. Moreover, the compliance plan process is more than sufficient to give the Commission adequate assurance that

the direct link between regulated costs and prices”) (quoting *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, Report and Order, 6 FCC Rcd 7571, 7596 ¶ 55 (1991), *vacated in part sub. nom., California v. FCC*, 39 F.3d 919 (9th Cir. 1994), *cert denied*, 514 U.S. 1050 (1995); and *United States v. Western Elec. Co.*, 993 F.2d 1572, 1580 (D.C. Cir. 1993) (“[Price cap regulation] reduces any BOC’s ability to shift costs from unregulated to regulated activities, because the increase in costs for the regulated activity does not automatically cause an increase in the legal rate ceiling”)).

Furthermore, both AdHoc and Joint Commenters overlook the role of the Bureau, which would have the authority “to prescribe the administrative requirements” of Verizon’s compliance plan and to approve that plan when the Bureau is satisfied that Verizon “will implement a method of preserving the integrity of its accounting system in the absence of the Cost Assignment Rules.” *See Cost Assignment Forbearance Order* ¶ 31. There is no reasonable basis to believe that the Bureau is not adequately equipped to make certain that Verizon’s compliance plan will “ensure that accounting data requested by the Commission in the future will be available and reliable.” *See id.* ¶ 21.

## V. CONCLUSION

For these reasons, the Commission must grant Verizon forbearance relief from the cost assignment rules.

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Verizon will retain the limited, pre-separated cost data necessary to complete the high cost reimbursement forms for these areas. Verizon will maintain substantially the same data it generates today, which has always been sufficient. That forbearance results in a need to determine what data will remain necessary for purposes of rural high cost support in isolated study areas cannot justify maintaining the Commission’s entire outdated and unnecessary cost assignment system for Verizon.

Respectfully submitted,

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